LIST OF AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council of California
Effective July 1, 2001

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Rule 39.51. Record in death penalty cases

(a) ***

(b) **[Confidential transcripts]** All documents filed confidentially under Penal Code section 987.9 or ~~987.3~~ 987.2 shall be sealed and copies provided only to the reviewing court and to counsel for the defendant to whom the documents relate. All transcripts of in camera proceedings shall be sealed and copies provided only to the reviewing court and to counsel for those parties present at the proceedings.

(Subd (b) amended effective July 1, 2001.)

(c) ***

Rule 39.51 amended effective July 1, 2001; adopted effective March 1, 1997.

TITLE TWO. Pretrial and Trial Rules

DIVISION I. Rules for the Trial Courts

CHAPTER 1. Rules ~~201~~200–203.5

Rule 227.10. Procedures for disposition of cases before the preliminary hearing

(a) ***

(b) **[Cases to be disposed of pursuant to rule ~~227.9~~ 4.114]** Pleas of guilty or no contest resulting from proceedings under subdivision (a) shall be disposed of as provided in rule ~~227.9~~ 4.114.

(Subd (b) amended effective July 1, 2001.)

Rule 227.10 amended effective July 1, 2001; adopted effective January 1, 1985; previously amended effective June 6, 1990, and January 1, 1991.

Rule 244. Temporary judge—stipulation, order, oath, assignment, compensation, and other matters

(a) [Stipulation] Except as provided in rule 1727, the stipulation of the parties that a case may be tried by a temporary judge ~~shall~~ must be in writing and ~~shall~~ must state the name and office address of the member of the State Bar agreed upon. It ~~shall~~ must be submitted for approval to the presiding judge or to the supervising judge of a branch court. This subdivision does not apply to the selection of a court commissioner to act as a temporary judge.

(Subd (a) amended effective July 1, 2001; previously amended and relettered effective July 1, 1993; previously amended effective January 1, 2001.)

(b) [Order and oath] The order designating the temporary judge ~~shall~~ must be endorsed upon the stipulation, which ~~shall~~ must then be filed. The temporary judge ~~shall~~ must take and subscribe the oath of office~~, which~~ and certify that he or she is aware of and will comply with applicable provisions of canon 6 of the Code of Judicial Ethics and these rules. The oath and certification ~~shall~~ must be attached to the stipulation and order of designation, and the case ~~shall~~ will then be assigned to the temporary judge for trial. After the oath is filed, the temporary judge may proceed with the hearing, trial, and determination of the case.

A filed oath and order, until revoked, may be used in any case in which the parties stipulate to the designated temporary judge. The stipulation ~~shall~~ must specify the filing date of the oath and order.

This subdivision does not apply to the selection of a court commissioner to act as a temporary judge.

(Subd (b) amended effective July 1, 2001; previously amended and relettered effective July 1, 1993.)

(c) [Disclosure to the parties] In addition to any other disclosure required by law, no later than five days after appointment as a temporary judge or, if the temporary judge is not aware of his or her appointment or of a matter subject to disclosure at that time, as soon as practicable thereafter, a temporary judge must disclose to the parties:

(1) Any matter subject to disclosure under subdivisions (D)(2)(f) and (D)(2)(g) of canon 6 of the Code of Judicial Ethics; and

(2) Any significant personal or professional relationship the temporary judge has or has had with a party, attorney, or law firm in the instant case, including the number and nature of any other proceedings in the past 24 months in which the temporary judge has been privately compensated by a party, attorney, law firm, or insurance company in the instant case for any services, including, but not limited to, service as an attorney, expert witness, or consultant or as a judge, referee, arbitrator, mediator, settlement facilitator, or other alternative dispute resolution neutral.

(Subd (c) adopted effective July 1, 2001.)

~~(c)~~(d) [Disqualification] ~~A request~~ Requests for disqualification of ~~a privately compensated~~ temporary judge~~s shall be~~ are determined as provided in Code of Civil Procedure sections 170.1, 170.2, 170.3, 170.4, and 170.5. ~~A privately compensated temporary judge, as soon as practicable, shall disclose to the parties any potential ground for disqualification under the provisions of Code of Civil Procedure section 170.1, and any facts that might reasonably cause a party to entertain a doubt that the temporary judge would be able to be impartial. A temporary judge who has been privately compensated in any other proceeding in the past 18 months as a judge, referee, arbitrator, mediator, or settlement facilitator by a party, attorney, or law firm in the instant case shall disclose the number and nature of other proceedings before the first hearing.~~

(Subd (d) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (c).)

~~(d)~~(e) [Use of court facilities, court personnel, and summoned jurors] A party who has elected to use the services of a privately compensated temporary judge is deemed to have elected to proceed outside the courthouse, and court facilities, court personnel, or summoned jurors ~~shall~~ must not be used, except upon a finding by the presiding judge that the use would further the interests of justice. For all matters pending before privately compensated temporary judges, the clerk ~~shall~~ must post a notice indicating the case name and number as well as the telephone number of a person to contact to arrange for attendance at any proceeding that would be open to the public if held in a courthouse.

(Subd (e) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (d).)

~~(e)~~(f) [Order for appropriate hearing site] The presiding judge or supervising judge, on request of any person or on the judge's own motion, may order that a case before a privately compensated temporary judge must be heard at a site easily accessible to the public and appropriate for seating those who have made known their plan to attend hearings. The request ~~shall~~ must be by letter with reasons stated and ~~shall~~ must be accompanied by a declaration that a copy of the request was mailed to each party, to the temporary judge, and to the clerk for placement in the file. The order may require that notice of trial or of other proceedings be given to the requesting party directly. An order for an appropriate hearing site ~~shall~~ is not ~~be~~ grounds for withdrawal of a stipulation.

(Subd (f) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (e).)

~~(f)~~(g) [Motion to withdraw stipulation or to seal records; complaint for intervention] A motion to withdraw a stipulation for the appointment of a temporary judge ~~shall~~ must be supported by a declaration of facts establishing good cause for permitting the party to withdraw the stipulation, and ~~shall~~ must be heard by the presiding judge or a judge designated by the presiding judge. A declaration that a ruling is based on error of fact or law does not establish good cause for withdrawing a stipulation. Notice of the motion ~~shall~~ must be served and filed, and the moving party ~~shall~~ must mail or deliver a copy to the temporary judge. If the motion is granted, the case ~~shall~~ must be transferred to the trial court docket.

A motion to seal records in a cause before a privately compensated temporary judge ~~shall~~ must be served and filed and ~~shall~~ must be heard by the presiding judge or a judge designated by the presiding judge. The moving party ~~shall~~ must mail or deliver a copy of the motion to the temporary judge and to any person or organization who has requested that the case be heard at an appropriate hearing site.

A motion for leave to file a complaint for intervention in a cause before a privately compensated temporary judge ~~shall~~ must be served and filed, and ~~shall~~ must be assigned for hearing as a law and motion matter. The party seeking intervention ~~shall~~ must mail or deliver a copy of the

motion to the temporary judge. If intervention is allowed, the case ~~shall~~ must be returned to the trial court docket unless all parties stipulate in the manner prescribed in subdivision (a) to proceed before the temporary judge.

(Subd (g) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (f).)

~~(g)~~(h) [Compensation] Temporary judges ~~shall~~ must ~~serve without compensation,~~ not be compensated by the parties unless the parties agree in writing on a rate of compensation to be paid by the parties~~, and that rate shall be allowed. This provision does not apply to juvenile dependency and delinquency proceedings in which the compensation of the referee is established by the county board of supervisors~~.

(Subd (h) amended and relettered effective July 1, 2001; adopted effective July 1, 1995, as subd (g).)

Rule 244 amended effective July 1, 2001; adopted effective January 1, 1949; previously amended effective April 1, 1962, July 1, 1981, July 1, 1987, July 1, 1993, July 1, 1995, and January 1, 2001.

Rule 244.1. Reference by agreement

(a) [Reference pursuant to Code of Civil Procedure section 638] A written agreement for an order ~~directing a reference~~ appointing a referee pursuant to section 638 of the Code of Civil Procedure ~~shall~~ must be presented with a proposed order to the judge to ~~which~~ whom the case is assigned, or to the presiding judge or supervising judge if the case has not been assigned. The proposed order ~~shall~~ must state the name, ~~and~~ business address, and telephone number of the proposed referee and, if he or she is a member of the State Bar, the proposed referee's State Bar number. If the proposed referee is a former California judicial officer, he or she must be an active or inactive member of the State Bar. The proposed order must bear the proposed referee's signature indicating consent to serve and certification that he or she is aware of and will comply with applicable provisions of canon 6 of the Code of Judicial Ethics and these rules. The written agreement and proposed order ~~shall~~ must clearly state whether the scope of the reference covers all issues or is limited to specified issues.

(Subd (a) amended effective July 1, 2001.)

(b) [Purposes of reference] A court must not use the reference procedure under Code of Civil Procedure section 638 to appoint a person to conduct a mediation. Nothing in this subdivision is intended to prevent a court from appointing a referee to conduct a mandatory settlement conference or, following the termination of a reference, from appointing a person who previously served as a referee to conduct a mediation.

(Subd (b) adopted effective July 1, 2001.)

(c) [Disclosure by referee] In addition to any other disclosure required by law, no later than five days prior to the deadline for parties to file a motion for disqualification of the referee under Code of Civil Procedure section 170.6 or, if the referee is not aware of his or her appointment or of a matter subject to disclosure at that time, as soon as practicable thereafter, a referee must disclose to the parties:

(1) Any matter subject to disclosure under subdivisions (D)(2)(f) and (D)(2)(g) of canon 6 of the Code of Judicial Ethics; and

(2) Any significant personal or professional relationship the referee has or has had with a party, attorney, or law firm in the instant case, including the number and nature of any other proceedings in the past 24 months in which the referee has been privately compensated by a party, attorney, law firm, or insurance company in the instant case for any services, including, but not limited to, service as an attorney, expert witness, or consultant or as a judge, referee, arbitrator, mediator, settlement facilitator, or other alternative dispute resolution neutral.

(Subd (c) adopted effective July 1, 2001.)

~~(b)~~(d) [Objections to the appointment] An agreement for an order ~~directing a reference~~ appointing a referee does not constitute a waiver of grounds for objection to the appointment under section 641 of the Code of Civil Procedure, but any objection ~~shall~~ must be made with reasonable diligence. ~~The referee shall disclose as soon as practicable any facts that might be grounds for disqualification. A referee who has been privately compensated in any other proceeding in the past 18 months as a judge, referee, arbitrator, mediator, or settlement facilitator by a party, attorney, or law firm in the instant case shall disclose the number and nature of other proceedings before the first hearing.~~ Any objection to the appointment of a person as a referee ~~shall~~ must be in

writing and ~~shall~~ must be filed and served upon all parties and the referee.

(Subd (d) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (b).)

~~(c)~~(e) [Use of court facilities and court personnel] A party who has elected to use the services of a privately compensated referee pursuant to section 638 of the Code of Civil Procedure is deemed to have elected to proceed outside the courthouse; therefore, court facilities and court personnel ~~shall~~ must not be used, except upon a finding by the presiding judge that the use would further the interests of justice. For all matters pending before privately compensated referees, the clerk ~~shall~~ must post a notice indicating the case name and number as well as the telephone number of a person to contact to arrange for attendance at any proceeding that would be open to the public if held in a courthouse.

(Subd (e) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (c).)

~~(d)~~(f) [Order for appropriate hearing site] The presiding judge or supervising judge, on request of any person or on the judge's own motion, may order that a case before a privately compensated referee must be heard at a site easily accessible to the public and appropriate for seating those who have made known their plan to attend hearings. The request ~~shall~~ must be by letter with reasons stated and ~~shall~~ must be accompanied by a declaration that a copy of the request was mailed to each party, to the referee, and to the clerk for placement in the file. The order may require that notice of trial or of other proceedings be given to the requesting party directly. An order for an appropriate hearing site ~~shall~~ is not ~~be~~ grounds for withdrawal of a stipulation.

(Subd (f) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (d).)

~~(e)~~(g) [Motion to withdraw stipulation or to seal records; complaint for intervention] A motion to withdraw a stipulation for the appointment of a referee ~~shall~~ must be supported by a declaration of facts establishing good cause for permitting the party to withdraw the stipulation, and ~~shall~~ must be heard by the presiding judge or a judge designated by the presiding judge. A declaration that a ruling is based on an error of fact or law does not establish good cause for withdrawing a stipulation. Notice of the motion ~~shall~~ must be served and filed, and the moving party ~~shall~~ must mail or deliver a copy to the referee. If the

motion is granted, the case ~~shall~~ must be transferred to the trial court docket.

A motion to seal records in a cause before a privately compensated referee ~~shall~~ must be served and filed and ~~shall~~ must be heard by the presiding judge or a judge designated by the presiding judge. The moving party ~~shall~~ must mail or deliver a copy of the motion to the referee and to any person or organization who has requested that the case take place at an appropriate hearing site.

A motion for leave to file a complaint for intervention in a cause before a privately compensated referee ~~shall~~ must be served and filed, and ~~shall~~ must be assigned for hearing as a law and motion matter. The party seeking intervention ~~shall~~ must mail or deliver a copy of the motion to the referee. If intervention is allowed, the case ~~shall~~ must be returned to the trial court docket unless all parties stipulate in the manner prescribed in subdivision (a) to proceed before the referee.

(Subd (g) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (e).)

(h) [Copies to office of presiding judge] A copy of the order appointing the referee, the referee's report under Code of Civil Procedure section 643, and any order of the court concerning the compensation of the referee must be forwarded to the office of the presiding judge of the court. On a monthly basis, the presiding judge must forward copies of these orders and reports to the Reference Research Project at the Administrative Office of the Courts.

(Subd (h) adopted effective July 1, 2001.)

Rule 244.1 amended effective July 1, 2001; adopted effective July 1, 1993.

Rule 244.2. Reference by order

(a) [~~Reference~~ Motion for reference pursuant to Code of Civil Procedure section 639] A motion by a party for the appointment of a referee pursuant to section 639 of the Code of Civil Procedure ~~shall~~ must be served and filed and ~~shall~~ must be heard in the department to which the case is assigned or, if the case has not been assigned, in the department in which law and motion matters are heard. The motion ~~shall~~ must specify the ~~scope of~~ matter or matters to be included in the

requested reference. ~~In determining whether a reference shall be made, the court, if requested to do so, shall balance the economic hardship to the litigants against the need for the reference. An order appointing a referee under section 639, whether based on a motion of a party or on the court's own motion, shall specify the reasons for the reference, the scope of the reference, and any conditions on the reference, including any limitation on the referee's total fees or hourly fee as well as the terms of the obligation of each party to pay the referee. When the issue of economic hardship is raised before the commencement of the referee's services, the court shall determine a fair and reasonable apportionment of reference costs. The court may modify its order as to the apportionment and may consider a recommendation by the referee as a factor in determining any modification.~~

(Subd (a) amended effective July 1, 2001; previously amended effective January 1, 1996.)

(b) **[Purposes of reference]** A court may order the appointment of a referee under Code of Civil Procedure section 639 only for the purposes specified in that section. A court must not use the reference procedure under Code of Civil Procedure section 639 to appoint a person to conduct a mediation. Nothing in this subdivision is intended to limit the power of a court to appoint a referee to conduct a mandatory settlement conference in a complex case or to prevent a court, following the termination of a reference, from appointing a person who previously served as a referee to conduct a mediation.

(Subd (b) adopted effective July 1, 2001.)

(c) **[Reference order]** A discovery referee must not be appointed pursuant to Code of Civil Procedure section 639(a)(5) unless the exceptional circumstances of the particular case require it. A referee must not be appointed at a cost to the parties unless the court can make one of the findings required by Code of Civil Procedure section 639(d)(6). Before an order appointing a referee is issued, the proposed referee must certify that he or she is aware of and will comply with applicable provisions of canon 6 of the Code of Judicial Ethics and these rules.

An order appointing a referee under Code of Civil Procedure section 639, whether based on a motion of a party or on the court's own motion, must be in writing and must address all of the matters required by Code of Civil Procedure section 639. If the referee is a member of the State Bar, the order must include the referee's State Bar number. The

referee's certification that he or she is aware of and will comply with applicable provisions of canon 6 of the Code of Judicial Ethics and these rules must be attached to the order. When the issue of economic hardship is raised before the commencement of the referee's services, the court must determine a fair and reasonable apportionment of reference costs. The court may modify its order as to the apportionment and may consider a recommendation by the referee as a factor in determining any modification.

(Subd (c) adopted effective July 1, 2001.)

~~(b)~~(d) [Selecting the referee] The court must appoint the referee or referees as provided in Code of Civil Procedure section 640. If the referee is a former California judicial officer, he or she must be an active or inactive member of the State Bar. ~~In selecting the referee, the court shall accept nominations from the parties and provide a sufficient number of names so that the parties may choose the referee by agreement or elimination. The parties may waive this procedure by a waiver noted in the minutes. The name of the referee shall be stated in the order of reference.~~

(Subd (d) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (b).)

(e) [Disclosure by referee] In addition to any other disclosure required by law, no later than five days prior to the deadline for parties to file a motion for disqualification of the referee under Code of Civil Procedure section 170.6 or, if the referee is not aware of his or her appointment or of a matter subject to disclosure at that time, as soon as practicable thereafter, a referee must disclose to the parties:

(1) Any matter subject to disclosure under subdivisions (D)(2)(f) and (D)(2)(g) of canon 6 of the Code of Judicial Ethics; and

(2) Any significant personal or professional relationship the referee has or has had with a party, attorney, or law firm in the instant case, including the number and nature of any other proceedings in the past 24 months in which the referee has been privately compensated by a party, attorney, law firm, or insurance company in the instant case for any services, including, but not limited to, service as an attorney, expert witness, or consultant or as a judge, referee, arbitrator, mediator, settlement facilitator, or other alternative dispute resolution neutral.

(Subd (e) adopted effective July 1, 2001.)

~~(c)~~(f) [Objection to reference] Participation in the selection procedure under subdivision ~~(b)~~ (d) does not constitute a waiver of grounds for objection to the appointment under section 641 of the Code of Civil Procedure, or objection to the rate or apportionment of compensation of the referee, but any objection ~~shall~~ must be made with reasonable diligence. ~~It is the duty of a referee to disclose as soon as practicable any facts that are known by the referee that might be grounds for disqualification. A referee who has been privately compensated in any other proceeding in the past 18 months as a judge, referee, arbitrator, mediator, or settlement facilitator, by a party, attorney, or law firm in the instant case, shall disclose the number and nature of such other proceedings, including the name of any party, attorney, and law firm that appeared in the previous case and is appearing in the instant case.~~ Any objection to the appointment of a person as a referee ~~shall~~ must be in writing and ~~shall~~ must be filed and served upon all parties and the referee.

(Subd (f) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (c); previously amended effective January 1, 1996.)

~~(d)~~(g) [Use of court facilities] A reference ordered pursuant to section 639 of the Code of Civil Procedure ~~shall~~ entitles the parties to the use of court facilities and court personnel to the extent provided in the order of reference. The proceedings may be held in a private facility, but if so, the private facility ~~shall~~ must be open to the public upon request of any person.

(Subd (g) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (d).)

~~(e)~~(h) [Discovery referees] ~~An order of reference~~ When a referee is appointed under section 639~~(e)~~(a)(5) of the Code of Civil Procedure to assist in the resolution of a discovery dispute ~~shall~~:

(1) The order appointing the referee must clearly state whether the referee is being appointed for all discovery purposes or only for limited purposes.

~~(1)~~(2) ~~Grant the~~ The referee ~~the authority~~ is authorized to set the date, time, and place for all hearings determined by the referee to be necessary, to direct the issuance of subpoenas, to preside over hearings, to take evidence, and to rule on objections, motions, and other requests made during the course of the hearing.

~~(2) Require the referee to submit a written report to the parties and to the court within 20 days after the completion of the hearing, with a proposed order and any recommendation for the imposition of sanctions.~~

~~(3) Require that objections to the report shall be served and filed no later than 15 calendar days after the report is mailed to counsel, that any party who objects to the report shall serve and file notice of a request for a hearing, and that copies of the objections and any responses shall be serve d upon the referee.~~

~~(4) State that the court may seek the recommendation of the referee as to an allocation of referee's fees.~~

~~(5) Address other matters as necessary.~~

(Subd (h) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (e).)

(i) [Copies to office of presiding judge] A copy of the order appointing the referee, the referee's report under Code of Civil Procedure section 643, and any order of the court concerning the compensation of the referee must be forwarded to the office of the presiding judge of the court. On a monthly basis, the presiding judge must forward copies of these orders and reports to the Reference Research Project at the Administrative Office of the Courts.

(Subd (i) adopted effective July 1, 2001.)

Rule 244.2 amended effective July 1, 2001; adopted effective July 1, 1993; previously amended effective January 1, 1996.

DIVISION V. Rules for the Unified Superior Court

~~CHAPTER 1. Rules for Pretrial and Trial Procedure~~

Title 2, Pretrial and Trial Rules—Division V, Rules Relating to Justice Courts—Chapter 1, Rules for Pretrial and Trial Procedure. Chapter repealed effective July 1, 2001; adopted effective January 1, 1977.

~~Rule 701. Purpose~~

~~The purpose of the rules in this division is to implement article VI, section 5, of the California Constitution and Government Code, title 8, chapter 5.1 (commencing with section 70200).~~

Rule 701 repealed effective July 1, 2001; previously repealed and adopted effective June 3, 1998, the effective date of the trial court unification measure (Prop. 220).

~~Rule 702. Application of these rules~~

~~The rules in this division apply to municipal and superior courts voting to establish a unified superior court within the county.~~

Rule 702 repealed effective July 1, 2001; previously repealed and adopted effective June 3, 1998, the effective date of the trial court unification measure (Prop. 220).

~~Rule 703. Application to call for the vote~~

~~(a) [Who applies]~~ ~~The application to the Judicial Council to call for a vote to unify the municipal and superior courts within the county shall be made by one of the following:~~

~~(1) the presiding judge of the superior court in that county;~~

~~(2) all of the presiding judges of the municipal courts within the county;~~

~~(3) the presiding judge of the superior court acting at the request of a majority of the superior court judges within the county; or~~

~~(4) the presiding judge of the municipal court located in the county seat acting at the request of a majority of the municipal court judges within the county.~~

~~(b) [Presiding judge defined]~~ ~~For the purpose of this rule and throughout title two, division V, a "presiding judge of the superior court" includes a single countywide presiding judge elected under an approved coordination plan.~~

~~(c) [Contents]~~ ~~The application shall be on a form prescribed by rule 982.4(1). The application shall include the following:~~

(1) The operative date of the unified court. If more than one application with conflicting operative dates is presented to the Judicial Council, the Judicial Council shall select the operative date;

(2) The date for the call of the vote, which shall be at least 14 days and no more than 30 days after the date the application is mailed to the Judicial Council. If more than one application with conflicting dates for the call of the vote is presented to the Judicial Council, the Judicial Council shall select the date for the call of the vote; and

(3) A selection of either the Judicial Council or the county registrar of voters to certify the vote. If any application designates the county registrar of voters to certify the vote, then the county registrar of voters shall certify the vote.

Rule 703 repealed effective July 1, 2001; adopted effective June 3, 1998, the effective date of the trial court unification measure (Prop. 220).

Rule 704. Voting procedure

(a) [Call of the vote] The Judicial Council shall act on an application to call for a vote to unify the courts within the county. The date for the call of the vote shall be the date specified in the application.

(b) [Manner of voting] The manner of voting is left to the discretion of the presiding judge of each court within the county.

(c) [Eligible votes] Only votes cast by judges who are eligible to vote on the date the vote is taken shall be counted.

(d) [Date of the vote] Votes may be cast at any time within 30 days after the call of the vote and must be received by the close of business on the 30th day. The 30th day after the call of the vote is the date the vote is taken.

(e) [Certification of the vote] If the Judicial Council is to certify the vote, the presiding judge of each court within the county shall certify the vote for that court and forward the certified results to the Judicial Council immediately after the vote is taken. If the county registrar of voters is to

~~certify the vote, the presiding judge of the superior court shall notify the Judicial Council of the results immediately after certification by the registrar. The Judicial Council shall make public the results of the vote.~~

Rule 704 repealed effective July 1, 2001; adopted effective June 3, 1998, the effective date of the trial court unification measure (Prop. 220).

~~Rule 705. Frequency of vote call~~

~~An application to the Judicial Council to call for a vote to unify the municipal and superior courts within the county may be made no more than once every six months through December 31, 1999. Thereafter the application may be made no more than once every 12 months. The Judicial Council may on application authorize a more frequent vote.~~

Rule 705 repealed effective July 1, 2001; adopted effective June 3, 1998, the effective date of the trial court unification measure (Prop. 220).

~~Rule 706. Alternative procedure by unanimous written consent~~

~~(a) [Ballot]~~ ~~Notwithstanding rule 703 and rule 704 (a) - (d), a court may deliver a ballot to the Judicial Council that is endorsed in favor of unification by unanimous written consent of all judges in the county. The ballot shall include:~~

~~(1) the operative date of the unified court;~~

~~(2) the name of each judge, the vote cast, and the date the vote was cast; and~~

~~(3) certification of the vote by the presiding judge of the superior court.~~

~~(b) [Eligible votes]~~ ~~Only votes cast by judges who are eligible to vote on the date the ballot is certified by the county registrar of voters or the presiding judge shall be counted.~~

~~(c) [Form]~~ ~~The ballot shall be accompanied by a completed form prescribed by rule 982.4(2).~~

Rule 706 repealed effective July 1, 2001; adopted effective June 3, 1998, the effective date of the trial court unification measure (Prop. 220).

~~Rule 707. Name of court~~

~~A unified court shall be named Superior Court of California, County of (*insert name*)_____.~~

~~Rule 707 repealed effective July 1, 2001; adopted effective June 3, 1998, the effective date of the trial court unification measure (Prop. 220).~~

~~Rule 708. Transitional procedures~~

~~(a) [Presiding judge of the unified court]~~ ~~The presiding judge of the superior court shall serve as the acting presiding judge of the unified court until an election is held. An election of the presiding judge for the unified court shall be held no later than 90 days after the operative date of the unified court. The acting presiding judge may implement transitional statutory requirements. In those counties where a single countywide presiding judge has previously been elected under an approved coordination plan, the presiding judge shall serve as the presiding judge of the unified court until the end of his or her term.~~

~~(b) [Executive officer of the unified court]~~ ~~The executive officer of the superior court, or the single countywide executive officer selected under an approved coordination plan, shall serve as the acting executive officer of the unified court. The acting executive officer shall serve the unified court until an executive officer for the unified court is selected. In those counties where a single countywide executive officer has previously been selected under an approved coordination plan, the executive officer shall continue to serve the unified court at the pleasure of a majority of the judges of the unified court or under the terms of selection.~~

~~(c) [Memorandum of agreement]~~ ~~Notwithstanding subdivisions (a) and (b), a majority of the judges of the superior court and a majority of the judges of the municipal court may, on or before the date of unification, adopt a memorandum of agreement that names the presiding judge or executive officer of the unified superior court. The memorandum of agreement may adopt changes in local rules or policies governing the internal management of the unified superior court, which may take effect upon or after unification on a date other than as provided in Government Code section 68071.~~

Rule 708 repealed effective July 1, 2001; adopted effective June 3, 1998, the effective date of the trial court unification measure (Prop. 220); previously amended effective December 2, 1999.

~~**CHAPTER 2. Justice Court Administration Rules**~~

Title 2, Pretrial and Trial Rules—Division V, Rules Relating to Justice Courts—Chapter 2, Justice Court Administration Rules; Chapter repealed effective July 1, 2001; added effective July 1, 1988.

Former Chapter 2, Rules for Qualifying Examination for Lay Candidates for Judge of the Justice Court, consisting of rules 750–760, was adopted effective July 1, 1972, and repealed effective July 1, 1975

~~**CHAPTER 3. Rules for Oral Examining Boards for Candidates for Office of Judge of the Justice Court**~~

Title 2, Pretrial and Trial Rules—Division V, Rules Relating to Justice Courts—Chapter 3, Rules for Oral Examining Boards for Candidates for Office of Judge of the Justice Court; Chapter repealed effective July 1, 2001; adopted effective July 1, 1972.

~~**CHAPTER 4. Rules Relating to Circuit Justice Court Judges**~~

Title 2, Pretrial and Trial Rules—Division V, Rules Relating to Justice Courts—Chapter 4, Rules Relating to Circuit Justice Court Judges; Chapter repealed effective July 1, 2001; adopted effective May 17, 1975.

~~**CHAPTER 5. Rules Relating to Compensation of Justice Court Judges Serving on Exchange Assignments**~~

Title 2, Pretrial and Trial Rules—Division V, Rules Relating to Justice Courts—Chapter 5, Rules Relating to Compensation of Justice Court Judges Serving on Exchange Assignments; Chapter repealed effective July 1, 2001; adopted effective January 1, 1977.

Rule 851. Eligibility criteria for attending traffic violator school

(a) [Purpose] The purpose of this rule is to establish uniform statewide criteria for eligibility to attend traffic violator school as pretrial diversion under Vehicle Code sections 41501 and ~~42005.3~~ 42005.

(Subd (a) amended effective July 1, 2001.)

(b)–(d) ***

Rule 851 amended effective July 1, 2001; adopted effective January 1, 1997; previously amended effective January 1, 1998.

Rule 859. Deferral of jury service

A mother who is breastfeeding a child may request that jury service be deferred for up to one year, and may renew that request as long as she is breastfeeding. If the request is made in writing, under penalty of perjury, the jury commissioner must grant it without requiring the prospective juror to appear at court.

Rule 859 adopted effective July 1, 2001.

Rule 981. Local court rules—adopting, filing, distributing, and maintaining

(a)–(h) ***

(i) [Alternative effective date] A court may adopt a rule to take effect on a date other than as provided by Government Code section 68071 if:

(1) The presiding judge submits to the Judicial Council the proposed rule and a statement of reasons constituting good cause for making the rule effective on the stated date;

(2) The Chair of the Judicial Council authorizes the rule to take effect on the date proposed; and

(3) The rule is made available for inspection as provided in subdivision ~~(c)~~ (b) on or before the effective date.

(Subd (i) amended effective July 1, 2001; adopted effective January 1, 1993, as subd (j); relettered effective July 1, 1999).)

(j) [Limitation] Except for subdivision (i), ~~T~~this rule does not apply to local rules that relate only to the internal management of the court.

(Subd (j) amended effective July 1, 2001; adopted effective July 1, 1999.)

Rule 981 amended effective July 1, 2001; adopted effective July 1, 1991; previously amended effective January 1, 1993, and July 1, 1999.

Rule 981.5. Electronic filing and forms generation

(a) [Applicability] This rule applies to Judicial Council forms in any court participating in a pilot project for electronic filing or electronic generation of court documents.

(b) [Definitions]

(1) "Electronic filing" is the electronic transmission to or from a court of information contained in a Judicial Council form that is required in case processing, provided that the information is readable upon receipt.

(2) "Electronic generation of a court document" is the electronic generation by a court of a Judicial Council form for an order, notice, judgment, or other document.

(c) [Electronic filing and forms generation pilot projects; conditions] Any court that accepts electronic filings or provides electronic generation of court documents may modify Judicial Council forms for that purpose if its pilot project conforms to section 37 of the California Standards of Judicial Administration. Any court participating in an electronic filing pilot project shall send notice of the project to the Court Technology Advisory Committee and submit further informational reports as requested by the committee.

(d) [Equality of electronic and paper filings] In a court conducting a pilot project, filing requirements applicable to a form referenced in this rule may be satisfied by electronic filing. Pilot projects must accommodate paper filing, but no paper form is required if an electronic form is filed.

(e) [Fees] Before electronically filing a Judicial Council form, a filer is responsible for meeting the court's requirements for payment of any filing fee.

(f) [Expiration date] Rule 981.5 is repealed January 1, 2003.

Rule 981.5 adopted effective July 1, 2001.

~~**Rule 982.4. Unified superior court forms**~~

~~The following Judicial Council forms shall be used by municipal and superior courts voting to establish a unified superior court within the county:~~

~~(1) Application to Call for a Vote to Unify the Municipal and Superior Courts; or~~

~~(2) Unanimous Written Consent to Unify the Municipal and Superior Courts.~~

Rule 982.4 repealed effective July 1, 2001; adopted effective June 3, 1998, the effective date of the trial court unification measure (Prop. 220).

Rule 1180. ~~Kinship~~ Postadoption contact agreement

(a) [Applicability of rule (Fam. Code, §§ 8714, 8714.5, 8714.7; Welf. & Inst. Code, § § 358.1, 366.26)] This rule ~~shall apply~~ applies ~~only~~ to any adoption~~s~~ of a child ~~by a relative of the child or a relative of a sibling or half-sibling of the child~~. The adoption petition ~~shall~~ must be filed under Family Code section~~s~~ 8714 and 8714.5 ~~or, if the child is a dependent of the juvenile court, under Welfare and Institutions Code section 366.26~~. If the child is a dependent of the juvenile court, the adoption petition may be filed in that juvenile court and the clerk ~~shall~~ must open a confidential adoption file for the child, and this file ~~shall~~ must be separate and apart from the dependency file, with an adoption case number different from the dependency case number. For the purposes of this rule, a "relative" is defined as follows:

(1) An adult related to the child or the child's sibling or half-sibling by blood or affinity, including a relative whose status is preceded by the word "step," "great," great-great" or "grand"; ~~and~~ or

(2) The spouse of any of the persons described in subdivision (a)(1) even if the marriage was terminated by dissolution or the death of the spouse related to the child.

(Subd (a) amended effective July 1, 2001.)

(b) [Agreement for postadoption contact (Fam. Code, § 8714.7)] An adoptive parent or parents, a birth relative or relatives, including a birth parent or parents of a child who is the subject of an adoption petition, and the child may enter into a written agreement permitting

postadoption contact between the child and birth relatives. No prospective adoptive parent or birth relative may be required by court order to enter into a postadoption contact agreement.

(Subd (b) amended effective July 1, 2001.)

(c) ***

(d) [Terms of agreement (Fam. Code, § 8714.7)] The terms of the agreement ~~shall be~~ are limited to the following, although they need not include all permitted terms:

(1) Provisions for visitation between the child and a birth parent or parents;

(2) Provisions for visitation between the child and other identified birth relatives, including siblings or half-siblings of the child;

(3) Provisions for contact between the child and a birth parent or parents;

(4) Provisions for contact between the child and other identified birth relatives, including siblings or half-siblings of the child;

(5) Provisions for contact between the adoptive parent or parents and a birth parent or parents;

(6) Provisions for contact between the adoptive parent or parents and other identified birth relatives, including siblings or half-siblings of the child;

(7) Provisions for the sharing of information about the child with a birth parent or parents;

(8) Provisions for the sharing of information about the child with other identified birth relatives, including siblings or half-siblings of the child.

(9) The terms of any postadoption contact agreement entered into pursuant to a petition filed under Family Code section 8714 must be limited to the sharing of information about the child unless the child has an existing relationship with the birth relative.

(Subd (d) amended effective July 1, 2001.)

(e) [Child a party (Fam. Code, § 8714.7)] The child who is the subject of the adoption petition ~~shall be considered~~ is a party to the agreement whether or not specified as such.

(1) Written consent by a child ~~of~~ 12 years of age or older to the terms of the agreement ~~shall be~~ is required for enforcement of the agreement, unless the court finds by a preponderance of the evidence that the agreement is in the best interest~~s~~ of the child and waives the requirement of the child's written consent.

(2) If the child has been found by a juvenile court to be described by section 300 of the Welfare and Institutions Code, an attorney ~~shall~~ must be appointed to represent the child for purposes of participation in and consent to any ~~kinship~~ postadoption contact agreement, regardless of the age of the child. If the child has been represented by an attorney in the dependency proceedings, that attorney must be appointed for the additional responsibilities of this rule. The attorney is required to represent the child only until the adoption is decreed and dependency terminated.

(Subd (e) amended effective July 1, 2001.)

(f) [Form and provisions of the agreement (Fam. Code, § 8714.7)] The agreement ~~shall~~ must be prepared and submitted on Judicial Council form ~~*Kinship Adoption*~~ *Postadoption Contact Agreement* (ADOPT–310) with appropriate attachments.

(Subd (f) amended effective July 1, 2001.)

(g) [Report to the court (Fam. Code, § 8715)] The department or agency participating as a party or joining in the petition for adoption ~~shall~~ must submit a report to the court. The report ~~shall~~ must include a criminal record check and descriptions of all social service referrals. If a ~~Kinship Adoption~~ postadoption contact ~~A~~agreement has been submitted, the report ~~shall~~ must include a summary of the agreement and a recommendation as to whether it is in the best interest~~s~~ of the child.

(Subd (g) amended effective July 1, 2001.)

(h) [Enforcement of the agreement (Fam. Code, § 8714.7)] The court that grants the petition for adoption and approves the ~~Kinship Adoption~~

postadoption contact ~~A~~agreement ~~shall~~ must retain jurisdiction over the agreement.

(1) Any petition for enforcement of an agreement ~~shall~~ must be filed on Judicial Council form *Petition for Enforcement, Modification, or Termination of ~~Kinship Adoption~~ Postadoption Contact Agreement* (ADOPT–315). The form ~~shall~~ must not be accepted for filing unless completed in full, with documentary evidence attached of participation in, or attempts to participate in, mediation or other dispute resolution.

(2) ***

(3) The court ~~shall~~ must not order investigation or evaluation of the issues raised in the petition unless the court finds by clear and convincing evidence that:

(A)–(B) ***

(4) ~~No monetary~~ Monetary damages ~~shall~~ must not be ordered.

(Subd (h) amended effective July 1, 2001.)

(i) [Modification or termination of agreement (Fam. Code, § 8714.7)] The agreement may be modified or terminated by the court. Any petition for modification or termination of an agreement ~~shall~~ must be filed on Judicial Council form *Petition for Enforcement, Modification, or Termination of ~~Kinship Adoption~~ Postadoption Contact Agreement* (ADOPT–315). The form ~~shall~~ must not be accepted for filing unless completed in full, with documentary evidence attached of participation in, or attempts to participate in, mediation or other appropriate dispute resolution.

(1) The agreement may be terminated or modified only if:

(A) All parties, including the child of 12 years or older, have signed the petition or have indicated on the Judicial Council form *Response to Petition for Enforcement, Modification, or Termination of ~~Kinship Adoption~~ Postadoption Contact Agreement* (ADOPT–320) their consent or have executed a modified agreement filed with the petition; or

(B) ***

(2) ***

(3) The court may order modification or termination without a hearing if all parties, including the child of 12 years or older, have signed the petition or have indicated on the Judicial Council form *Response to Petition for Enforcement, Modification, or Termination of ~~Kinship Adoption~~ Postadoption Contact Agreement* (ADOPT–320) their consent or have executed a modified agreement filed with the petition.

~~(4) The court shall not order an investigation or evaluation of the issues raised in the petition unless the court finds by clear and convincing evidence that:~~

~~(A) The best interests of the child may be protected or advanced only by such inquiry; and~~

~~(B) The inquiry will not disturb the stability of the child's home to the child's detriment.~~

(Subd (i) amended effective July 1, 2001.)

(j) [Costs and fees (Fam. Code, § 8714.7)] The fee for filing a *Petition for Enforcement, Modification, or Termination of ~~Kinship Adoption~~ Postadoption Contact Agreement* (ADOPT–315) ~~shall~~ must not exceed the fee assessed for the filing of an adoption petition. Costs and fees for mediation or other appropriate dispute resolution ~~shall~~ must be assumed by each party, with the exception of the child. All costs and fees of litigation, including any court-ordered investigation or evaluation, ~~shall~~ must be charged to the petitioner unless the court finds that a party~~,~~ other than the child~~,~~ has failed, without good cause, to comply with the approved agreement; all costs and fees ~~shall~~ must then be charged to that party.

(Subd (j) amended effective July 1, 2001.)

(k) [Adoption final (Fam. Code, § 8714.7)] Once a decree of adoption has been entered, the court may not set aside the decree, rescind any relinquishment, modify or set aside any order terminating parental rights, or modify or set aside any other orders related to the granting of the adoption petition, due to the failure of any party to comply with the

terms of a ~~Kinship Adoption~~ postadoption contact ~~A~~agreement or any subsequent modifications to it.

(Subd (k) amended effective July 1, 2001.)

Rule 1180 amended effective July 1, 2001; adopted effective July 1, 1998.

Rule 1438. Attorneys for parties (§§ 317, 317.6)

(a) [Local rules] On or before January 1, 2002 ~~July 1, 1996~~, the superior court of each county must amend its ~~shall adopt~~ local rules regarding the representation of parties in dependency proceedings.

(1) The local rules must ~~shall~~ be amended ~~drafted~~ after consultation by the court with representatives of the State Bar of California, local offices of the county counsel, district attorney, public defender, and other attorneys appointed to represent parties in these proceedings, county welfare departments, child advocates, current or recent foster youth, and others selected by the court in accordance with section 24(c) of the Standards of Judicial Administration.

(2) The amended rules must ~~shall~~ address the following as needed:

(A) Representation of children in accordance with other sections of this rule;

~~(A)~~(B) Timelines and procedures for settlements, mediation, discovery, protocols, and other issues related to contested matters;

~~(B)~~(C) Procedures for the screening, training, and appointment of attorneys representing parties, with particular attention to the training requirements for attorneys representing children;

~~(C)~~(D) Establishment of minimum standards of experience, training, and education of attorneys representing parties, including additional training and education in the areas of substance abuse and domestic violence as required;

(E) Establishment of procedures to determine appropriate caseloads for attorneys representing children;

~~(D)~~(F) Procedures for reviewing and resolving complaints by parties regarding the performance of attorneys; ~~and~~

~~(E)~~(G) Procedures for informing the court of interests of the dependent child requiring further investigation, intervention, or litigation~~.~~; and

(H) Procedures for appointment of a guardian ad litem, who may be an attorney or a CASA, in cases in which a prosecution is initiated under the Penal Code arising from neglect or abuse of the child.

(3) Appropriate local forms may be utilized.

(Subd (a) amended effective July 1, 2001.)

(b) [Attorneys for children] Appointment of counsel for a child who is the subject of a petition under section 300, and is unrepresented by counsel, is required, unless the court finds that the child would not benefit from the appointment of counsel.

(1) In order to find that a child would not benefit from the appointment of counsel, the court must find all of the following:

(A) The child understands the nature of the proceedings;

(B) The child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and

(C) Under the circumstances of the case, the child would not gain any benefit by being represented by counsel.

(2) If the court finds that the child would not benefit from representation by counsel, the court must make a finding on the record as to each of the criteria in (1) and state the reasons for each finding.

(3) If the court finds that the child would not benefit from representation by counsel, the court must appoint a Court Appointed Special Advocate for the child, to serve as guardian ad litem, as required in section 326.5.

(Subd (b) adopted effective July 1, 2001.)

~~(b)~~**(c) [Competent counsel]** Every party in a dependency proceeding who is represented by an attorney ~~shall be~~ is entitled to competent counsel.

(1–2)* * *

(3) *(Experience and education)* Only those attorneys who have completed a minimum of eight hours of training or education in the area of juvenile dependency, or who have sufficient recent experience in dependency proceedings in which the attorney has demonstrated competency, ~~shall~~ may be appointed to represent parties. In addition to a summary of dependency law and related statutes and cases, training and education for attorneys must ~~shall~~ include information on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, and reasonable efforts. Within every three years attorneys ~~are expected to~~ must complete at least 8 hours of continuing education relating to dependency proceedings.

(4) *(Standards of representation)* Attorneys or their agents are expected to meet regularly with clients, including clients who are children, regardless of the age of the child or the child's ability to communicate verbally, to contact social workers and other professionals associated with the client's case, to work with other counsel and the court to resolve disputed aspects of a case without contested hearing, and to adhere to the mandated timelines. The attorney for the child must have sufficient contact with the child to establish and maintain an adequate and professional attorney-client relationship. The attorney for the child is not required to assume the responsibilities of a social worker and is not expected to perform services for the child that are unrelated to the child's legal representation.

(5) (*Caseloads for children's attorneys*) The attorney for a child must have a caseload that allows the attorney to perform the duties required by Welfare and Institutions Code section 317(e) and this rule and to otherwise adequately counsel and represent the child. To enhance the quality of representation afforded to children, attorneys appointed under this rule must not maintain a maximum full-time caseload that is greater than that which allows them to meet requirements set forth in (3) and (4)

(Subd (c) amended and relettered effective July 1, 2001; adopted effective January 1, 1996, as subd (b); previously amended effective July 1, 1999.)

~~(c)~~(d) [Client complaints] The court ~~shall~~ must establish a process for the review and resolution of complaints or questions by a party regarding the performance of an appointed attorney. Each party ~~shall~~ must be informed of the procedure for lodging the complaint. If it is determined that an appointed attorney has acted improperly or contrary to the rules or policies of the court, the court ~~shall~~ must take appropriate action.

(Subd (d) amended and relettered effective July 1, 2001; adopted effective January 1, 1996, as subd (c).)

(e) [Court Appointed Special Advocate as guardian ad litem (§ 326.5)] If the court makes the findings as outlined in (b), and does not appoint an attorney to represent the child, the court must appoint a Court Appointed Special Advocate (CASA) as guardian ad litem of the child.

(1) The required training of CASA volunteers is set forth in rule 1424.

(2) The caseload of a CASA volunteer acting as a guardian ad litem must be limited to 10 cases. A case may include siblings, absent a conflict.

(3) CASA volunteers must not assume the responsibilities of attorneys for children.

(4) The appointment of an attorney to represent the child does not prevent the appointment of a CASA volunteer for that child and the courts are encouraged to appoint both an attorney and a CASA volunteer for the child in as many cases as possible.

(Subd (e) adopted effective July 1, 2001.)

~~(d)~~(f) [Interests of the child] At any time following the filing of a petition under section 300 and until juvenile court jurisdiction is terminated, any interested person may advise the court of information regarding an interest or right of the child to be protected or pursued in other judicial or administrative forums.

(1) Judicial Council forms *Juvenile Dependency Petition* (JV-100) and *Modification Petition Attachment* (JV-180) may be utilized.

(2) If an attorney for the child, or a Court Appointed Special Advocate (CASA) acting as a guardian ad litem, learns of any such interest or right, the attorney or CASA ~~shall~~ must notify the court immediately and seek instructions from the court as to any appropriate procedures to follow.

(3) If the court determines that further action on behalf of the child is required to protect or pursue any interests or rights, the court ~~shall~~ must appoint an attorney for the child if the child is not already represented by counsel, and do one or all of the following:

(A) Refer the matter to the appropriate agency for further investigation, and require a report to the court within a reasonable time;

~~(B) Appoint an attorney for the child if the child is unrepresented;~~

~~(C)~~(B) Authorize and direct the child's attorney to initiate and pursue appropriate action;

~~(D)~~(C) Appoint a guardian ad litem for the child, who may be the CASA already appointed as guardian ad litem, or a person who will act only if ~~one~~ ~~is~~ required to initiate appropriate action; or

~~(E)~~(D) Take any other action to protect or pursue the interests and rights of the child.

(Subd (f) amended and relettered effective July 1, 2001; adopted effective January 1, 1996, as subd (d).)

Rule 1438 amended effective July 1, 2001; adopted effective January 1, 1996; previously amended effective July 1, 1999.

Rule 1456. Orders of the court

(a)–(e) ***

(f) [Provisions of reunification services (§ 361.5)]

(1)–(7) *******

(8) If the court finds under subdivision ~~(4)~~(5)(A) that the whereabouts of the parent or guardian are unknown and that a diligent search has failed to locate the parent or guardian, the court shall not order reunification services and shall set the matter for a six-month review hearing. If the parent or guardian is located prior to the six-month review and requests reunification services, the welfare department shall seek a modification of the disposition orders. The time limits for reunification services shall be calculated from the date of the initial removal, and not from the date the parent is located or services are ordered.

(9) If the court finds that allegations under subdivision ~~(4)~~(5)(B) are proved, the court shall nevertheless order reunification services unless evidence by mental health professionals establishes by clear and convincing evidence that the parent is unlikely to be able to care for the child within the next 12 months.

(10) If the court finds that the allegations under subdivision ~~(4)~~(5)(C), (D), (F), (G), (H), (I), (J), (K), (L), (M), or (N) have been proved, the court shall not order reunification services unless the party seeking the order for services proves by clear and convincing evidence that reunification is in the best interest of the child. If subdivision ~~(4)~~(5)(F) is found to apply, the court shall consider the factors in section 361.5(h) in determining whether the child will benefit from services, and shall specify on the record the factual findings on which it based its determination that the child will not benefit.

(11) If the court finds that the allegations under subdivision ~~(4)~~(5)(E) have been proved, the court shall not order reunification services unless it finds, based on consideration of factors in section 361.5(b) and (c), that services are likely to prevent reabuse or continued neglect or that failure to attempt reunification will be detrimental to the child.

(12) ***

(13) If, with the exception of subdivision ~~(4)~~(5)(A), the court orders no reunification services for every parent otherwise eligible for such services under subdivisions (f)(1) and (2), the court shall conduct a hearing under section 366.26 within 120 days.

(14)–17 ***

(Subd (f) amended effective July 1, 2001; adopted effective January 1, 1991, as subd (e); relettered effective July 1, 1995; previously amended effective January 1, 1993, July 1, 1993, January 1, 1994, January 1, 1995, January 1, 1996, July 1, 1997, January 1, 1999, July 1, 1999, and January 1, 2001.)

(g)–(j) ***

Rule 1456 amended effective July 1, 2001; adopted effective January 1, 1991; previously amended effective January 1, 1993, July 1, 1993, January 1, 1994, January 1, 1995, July 1, 1995, January 1, 1996, January 1, 1997, July 1, 1997, January 1, 1999, July 1, 1999, and January 1, 2001.

Rule 1604. Composition of the panels

(a) ~~In every~~ Every court ~~there shall be~~ must have a panel of arbitrators for personal injury cases, and such additional panels as the presiding judge may, from time to time, determine are needed.

(Subd (a) amended effective July 1, 2001; previously amended effective July 1, 1979.)

(b) The panels of arbitrators ~~shall~~ must be composed of active members of the State Bar, retired court commissioners who were licensed to practice law prior to their appointment as a commissioner, and retired judges. A former California judicial officer is not eligible for the panel of arbitrators unless he or she is an active or inactive member of the State Bar.

Each person appointed ~~shall~~ serve s as a member of a panel of arbitrators at the pleasure of the administrative committee. A person may be on arbitration panels in more than one county.

(Subd (b) amended effective July 1, 2001; previously amended effective July 1, 1979, and January 1, 1996.)

(c) The administrative committee ~~shall determine~~ is responsible for determining the size and composition of ~~the~~ each panel~~s~~ of arbitrators. The number of attorneys on a personal injury panel who usually represent plaintiffs ~~shall~~ must, to the extent feasible, equal the number of those who usually represent defendants.

(Subd (c) amended effective July 1, 2001.)

(d) An appointment to a panel is effective when the person appointed:

(1) ~~agrees~~ Agrees to serve;

(2) Certifies that he or she is aware of and will comply with applicable provisions of canon 6 of the Code of Judicial Ethics and these rules; and

(3) ~~files~~ Files an oath or affirmation to justly try all matters submitted to him or her.

(Subd (d) amended effective July 1, 2001; previously amended effective January 1, 1996.)

(e) Lists showing the names of panel arbitrators available to hear cases ~~shall~~ must be available for public inspection in the arbitration administrator's office.

(Subd (e) amended effective July 1, 2001.)

~~**(f)** A superior court and a municipal court may by local rule of each court agree to jointly use the superior court panel of arbitrators and share the administrative duties subject to such terms and conditions as are mutually agreeable, including membership of a municipal court representative on the administrative committee.~~

(Subd (f) repealed effective July 1, 2001; previously amended effective July 1, 1979.)

Rule 1604 amended effective July 1, 2001; adopted effective July 1, 1976; previously amended effective July 1, 1979, and January 1, 1996.

Rule 1606. Disqualification for conflict of interest

(a) ~~It shall be the duty of the~~ The arbitrator ~~to~~ must determine whether any cause exists for disqualification upon any of the grounds set forth in section 170.1 of the Code of Civil Procedure governing the disqualification of judges. If any member of the arbitrator's law firm would be disqualified under subdivision 4 of section 170.1, the arbitrator is disqualified. Unless the ground for disqualification is disclosed to the parties in writing and is expressly waived by all parties in writing, the arbitrator ~~shall~~ must promptly notify the administrator of any known ground for disqualification and another arbitrator ~~shall~~ must be selected as provided in rule 1605.

(Subd (a) amended effective July 1, 2001; previously amended effective July 1, 1979, and July 1, 1990.)

(b) In addition to any other disclosure required by law, no later than five days prior to the deadline for parties to file a motion for disqualification of the arbitrator under Code of Civil Procedure section 170.6 or, if the arbitrator is not aware of his or her appointment or of a matter subject to disclosure at that time, as soon as practicable thereafter, an arbitrator must disclose to the parties:

(1) Any matter subject to disclosure under subdivisions (D)(2)(f) and (D)(2)(g) of canon 6 of the Code of Judicial Ethics; and

(2) Any significant personal or professional relationship the arbitrator has or has had with a party, attorney, or law firm in the instant case, including the number and nature of any other proceedings in the past 24 months in which the arbitrator has been privately compensated by a party, attorney, law firm, or insurance company in the instant case for any services, including, but not limited to, service as an attorney, expert witness, or consultant or as a judge, referee, arbitrator, mediator, settlement facilitator, or other alternative dispute resolution neutral.

(Subd (b) adopted effective July 1, 2001.)

~~**(b)**~~**(c)** A copy of any request by a party for the disqualification of an arbitrator pursuant to section~~s~~ 170.1 or 170.6 of the Code of Civil Procedure ~~shall~~ must be sent to the administrator.

(Subd (c) amended and relettered effective July 1, 2001; adopted effective July 1, 1996, as subd (b); previously amended effective July 1, 1979, and July 1, 1990.)

~~**(c)**~~**(d)** Upon motion of any party, made as promptly as possible under sections 170.l and 1141.18(d) of the Code of Civil Procedure before the conclusion of arbitration proceedings, the appointment of an arbitrator to a case ~~shall~~ must be vacated if the court finds that the party has demanded that the arbitrator disqualify himself or herself and the arbitrator has failed to do so and any of the grounds specified in section 170.1 exists. The arbitration administrator ~~shall~~ must return the case to the top of the arbitration hearing list and ~~shall~~ must appoint a new arbitrator. The disqualified arbitrator's name ~~shall~~ must be returned to the list of those available for selection to hear cases, unless the court orders that the circumstances of the disqualification be reviewed, under rules 1603(d)(3) and 1604(b), by the administrative committee, the

presiding judge, or a judge designated by the presiding judge, for appropriate action.

(Subd (d) amended and relettered effective July 1, 2001; adopted effective January 1, 1994, as subd (c).)

Rule 1606 amended effective July 1, 2001; adopted effective July 1, 1976; previously amended effective July 1, 1979, July 1, 1990, and January 1, 1994.

Rule 6.702. Maintenance of and public access to budget and management information

(a)–(g) ***

(h) [Budget meeting] The provisions in this subdivision shall apply to that portion of any full council meeting at which county trial court system budgets are to be discussed. These provisions do not apply to other meetings such as orientation, planning, or educational meetings.

(1)–(5) *******

(6) Any designated employee representative who wishes to make an oral presentation to the council shall make a written request to the Administrative Office of the Courts (attention ~~Council Services Division~~ Secretariat Office) no later than 24 hours before the meeting unless the issue has arisen within the last five business days before the meeting in which case the written request may be made on the day of the meeting. The Chief Justice or his or her designee may limit the number and time of speakers in order to avoid cumulative discussion.

(7) *******

(Subd (h) amended effective July 1, 2001.)

(i)–(*l*) ***

Rule 6.702 amended effective July 1, 2001; adopted effective January 1, 2001.

Rule 6.756. Notice of superior court records destruction

(a) [Notice] The superior court shall give 30 days' written notice of its intent to destroy court records open to public inspection. "Records" of the superior court, as used in this rule, does not include records of limited civil, small claims, misdemeanor, or infraction cases. Written notice of the proposed destruction shall be given to entities maintained on a master list by the Judicial Council and to any other entities that have informed the court directly that they wish to be notified.

(Subd (a) amended effective July 1, 2001; previously amended effective January 1, 2001.)

(b)–(g) ***

Rule 6.756 amended effective July 1, 2001; adopted as rule 243.6 effective January 1, 1994; previously amended and renumbered effective January 1, 2001.

Sec. 26. Uniform standards of practice for court-connected mediation of child custody and visitation disputes

(a) [Responsibility for mediation services] Superior court judges and court administrators are primarily responsible for ensuring that (1) legislatively mandated court mediation programs are implemented and operated at high professional standards, and (2) families are provided a forum that offers the highest levels of impartiality and competency the court system can provide.

(Subd (a) adopted effective January 1, 1991.)

(b) [Orientation of mediation parties] Each court should develop a premediation education program based on current research and established court mediation practice.

(1) As part of its orientation process, each court should use a detailed intake form.

(2) Before beginning mediation, the mediator or a court representative should explain the following to the parties: (i) the types of disputed issues that are discussed in mediation; (ii) who has access to the information communicated by the participants in the session; (iii) the circumstances under which the mediator will make recommendations to the court; and (iv) who has access to the mediation file.

(3) Each court should provide the parties with a written description of (i) the mediation process and (ii) the court's formal procedures as they apply to the matters stated in subdivision (b)(2).

(4) Each court is encouraged to provide bilingual mediators to non-English-speaking parties or to inform parties and their attorneys that they should provide an interpreter. Parties with communication barriers should be informed by the court that they are responsible for providing an intermediary.

(Subd (b) adopted effective January 1, 1991.)

(c) [Ethics and sensitivity to differences] The mediators should maintain high ethical standards of conduct because they are fundamental to providing the highest level of service to families. In addition, mediators

~~should be knowledgeable about their own biases and be sensitive to individual, gender, racial, ethnic, and cultural values and differences.~~

~~(1) The parties and the mediator should disclose any actual or potential conflicts of interest. This conflict should be resolved to the satisfaction of all parties before mediation begins. If there is a conflict of interest between the mediator and one or both of the parties, the parties, their attorneys, and the mediator should meet and confer in an attempt to resolve the conflict of interest. After they meet and confer, if the conflict has not been resolved satisfactorily, they should submit the matter to the judge for resolution. The court may order mediation to continue with another mediator. If all parties agree to continue mediation despite the disclosed conflict of interest, the parties should acknowledge their agreement in writing. If a conflict of interest has been established, the court should offer alternatives (such as referral to another county).~~

~~(2) Even though the role of the mediator is defined as neutral in structuring and facilitating an agreement between the parties, the mediator should be mindful of the interests of the child. If the mediator's professional opinion is that a proposed agreement of the parties does not promote the best interest of the child, the mediator should inform the parties of this opinion and its basis. If the mediator's opinion is that an agreement would be detrimental to the child, the mediator should inform the parents, unless doing so would put the child at further risk. The mediator may inform the court of a potentially detrimental agreement unless doing so is inconsistent with the court's confidentiality rules. In addition, the mediator may recommend to the court that an attorney be appointed under Civil Code section 4606 to represent the interests of the child.~~

~~(3) In order to maintain a neutral stance the mediator should understand and be sensitive to differences including gender biases and ethnic and cultural diversity.~~

~~(4) The mediator should maintain client confidentiality according to all requirements of state law and rules of court. Client confidentiality includes confidentiality in the storage and disposal of records accumulated during the mediation process.~~

~~*(Subd (c) adopted effective January 1, 1991.)*~~

(d) [Minimum qualifications of mediators] The foundation of competency in mediation is the knowledge, training, and experience of the mediator. The minimum education and experience requirements provided by statute should be met within a reasonable time after the date of the new mediator's appointment.

(Subd (d) adopted effective January 1, 1991.)

(e) [Training and continuing education]

(1) The mediator should be knowledgeable and skillful in the performance of mediation. The court should provide a continuing opportunity for mediators to improve their knowledge and skills through such resources as formal education, conferences, workshops, seminars, and professional literature.

(2) Newly hired mediators should undergo a minimum of 40 hours of mediation training within their first six months of employment.

(3) Persons responsible for the clinical supervision of new mediators should meet the statutory education and experience qualifications for mediators, have two years' experience in court mediation, and demonstrate competence.

(4) Each court should make it possible for all family court directors, supervisors of mediators, and mediators to attend at least 16 hours of training each calendar year, including continuing education on domestic violence. In addition, mediators are required by section 1745.5 of the Code of Civil Procedure to participate in continuing education on domestic violence.

(Subd (e) adopted effective January 1, 1991.)

(f) [Best interest of the child] The "best interest of the child" is a broad concept that involves the following principles:

(i) promoting social, cognitive, emotional, and physical well-being;

(ii) enabling optimal development as a productive member of our society;

(iii) minimizing exposure to danger, abuse, neglect, and family conflict; and

(iv) ensuring frequent and continuing contact with both parties so far as it is consistent with the above.

While the mediator has a duty to the parties to be impartial, the overriding concern of the mediator should be the best interest of the child.

(1) The mediator should strive to integrate the best interest of the child with the parents' circumstances, rights, and responsibilities. The mediator should use his or her best effort to assist the parents in reaching sound agreements and to help them work towards the reduction of acrimony, thereby reducing the negative effects of family conflict on the parents as well as on the child.

(2) It is at the mediator's discretion to suspend or not perform mediation if child abuse or neglect is reasonably suspected. Mediation may resume after the designated agency performs an investigation and reports a case determination to the mediator.

(Subd (f) adopted effective January 1, 1991.)

(g) [Facilitating the family's transition] The mediator should assist the parties to (1) focus on the needs of the child; (2) identify areas of stability for the child; (3) identify the strengths of the family; and (4) develop options that promote continuity in the child's relationships with each parent.

The mediator and the parents should carefully draft a comprehensive parenting plan (see subdivision (i)). A parenting plan may include but is not limited to the following:

(1) designation of legal and physical custody and how this is related to parental authority and decisionmaking;

(2) a weekly schedule for the child with each parent;

(3) a holiday schedule for the child with each parent;

(4) a summer schedule for the child with each parent;

(5) vacation time, i.e., time that the child may spend each year without regularly scheduled physical contact with the other parent;

(6) provisions for protecting the child, such as supervised visitation if high-risk factors are present, (e.g., a history of substance abuse, debilitating illness, acts of domestic violence by one or both parents, child abuse, or neglect); and

(7) special day arrangements, e.g., birthdays of the child, siblings, and parents.

(Subd (g) adopted effective January 1, 1991.)

(h) [Equalizing the power relationship between the parties] A primary objective of mediation should be to assist both parties in effecting a mutual and self-determined agreement regarding the child. The mediator, therefore, should be vigilant about a power imbalance in the parental relationship. Power imbalances can take many forms, including gender-biased attributions regarding parental role, intimidation, and economic advantage.

(1) *(Balancing power requires continuing vigilance)* Balancing power in mediation should be a continuing process and requires continuing mediator attention. An important means of empowering parties to reach informed decisions is through the provision of careful and detailed descriptions of the mediation process by the court, counsel, and mediator, and through premediation education as described in subdivision (b).

(2) *(When to continue mediation)* Mediation may proceed when in the mediator's judgment the parties are able to discuss their situation, including all the following factors:

(i) the free expression of all family members' needs;
(ii) exploration of available options;

(iii) reasonable alternatives discussed and freely agreed to by all; and

(iv) a plan for and agreement about the safety of all family members during the exchange of the children.

(3) *(When to terminate mediation)* If the mediator is not able to meet the spirit and intent of the criteria identified in (1) and (2) above to his or her satisfaction, mediation should be terminated. The mediator should use his or her best efforts to effect a balanced discussion between the parties, but when the discussion or behavior of one or both parties makes this impossible, mediation should be terminated.

(4) *(Conditions for separate sessions)* Separate sessions may be held if the mediator believes that the circumstances call for them. If there is a history of domestic violence and if a protective order is in effect, at the request of the party protected by the order, the parties shall meet with the mediator separately at separate times. Separate sessions may also be held at the request of one of the parties if there is an indication of domestic violence and no protective order is in effect. If the parties agree during their individual sessions to participate in a conjoint session, the mediator may agree to conjoint sessions.

(5) *(Understanding the plan)* The mediator should provide the opportunity for each party to understand all parenting plan provisions. This understanding should also include the importance of safeguards involving parental contact.

(6) *(Additional information and assistance)* If a party needs additional information or assistance for discussions to proceed in a fair and orderly manner or for an agreement to be reached, the mediator may postpone further mediation so that the parties may first obtain the needed information or assistance.

(7) *(Safety)* Mediation should be practiced in a physically safe and nonthreatening environment and be suspended if it becomes unsafe for any of the participants, including the mediator.

(Subd (h) adopted effective January 1, 1991.)

(i) [Concluding mediation] A detailed and clearly written parenting plan or agreement or, under certain circumstances, an oral agreement should be the end product of the mediation process. This agreement should be reported to counsel for the parties prior to its being reported to the court. Should an agreement not be reached, the mediator should explain to the parties what the next steps are, including whether he or she will make a recommendation to the court and, if appropriate, how the parties may

obtain temporary orders. Because children's needs change over time, the mediator should offer the opportunity for the parties to return to mediation if they are unable to renegotiate on their own.

(Subd (i) adopted effective January 1, 1991.)

(j) [Program accountability] The court should establish a follow-up assessment such as an exit survey or a follow-up survey for parties and attorneys. In addition, each court is strongly encouraged to establish a policy in writing regarding handling of complaints from parties, attorneys, and interested persons.

(Subd (j) adopted effective January 1, 1991.)

Sec. 26 repealed effective July 1, 2001, by Rules memorandum No. R-1(99); adopted effective January 1, 1991.

Note

The full text of this standard, with the approved drafters' commentary, is available from the Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, CA 94107.